

UNITED SUPERIOR COURT
SOUTHERN DISTRICT OF NEW YORK

Case No. 1:18-cv-04438-AT-BCM

- - - - -X
MORGAN ART FOUNDATION LIMITED, :
Plaintiff :
VS :
MICHAEL McKENZIE D/B/A AMERICAN :
IMAGE ART, :
Defendant :
- - - - -X

Videotaped deposition of
GREG ALLEN
taken via videoconference before Clifford Edwards,
Certified Shorthand Reporter and Notary Public, on
November 5, 2021, at 12:18 p.m.

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 21
 22
 23
 24
 25

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1 GREGORY ALLEN

2 THE VIDEOGRAPHER: We are now on
 3 the record. This begins media unit
 4 number one in the deposition of Gregory
 5 Allen in the matter of Morgan Art
 6 Foundation vs. McKenzie, et al. Today
 7 is November 5th, 2021. The time is
 8 12:20 p.m.

9 This deposition is being taken
 10 virtually at the request of Quinn
 11 Emanuel Urquhart & Sullivan, LLP. The
 12 videographer is Wes Schwartz of Magna
 13 Legal Services. And the court reporter
 14 is Cliff Edwards, also of Magna.

15 Will counsel and all parties
 16 present state their appearances and whom
 17 they represent?

18 MR. MARKHAM: I'm --

19 MR. RAKOWER: My name is --

20 MR. MARKHAM: Go ahead. Sorry,
 21 Ryan.

22 MR. RAKOWER: Sorry. I think we go
 23 first.

24 Ryan Rakower from Quinn Emanuel on
 25 behalf of Morgan Art Foundation.

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1 GREGORY ALLEN

2 MR. MARKHAM: My name is John
 3 Markham, and I'm the counsel of record,
 4 along with Markham Read Zerner, my law
 5 firm, for Mike McKenzie, d/b/a
 6 American -- AIA.

7 And I am also assisting today Greg
 8 Allen, who's here as a witness.

9 THE VIDEOGRAPHER: Will the court
 10 reporter please swear in the witness?

11 GREGORY ALLEN

12 having first been duly sworn, deposed and testified
 13 as follows:
 14

15 DIRECT EXAMINATION

16 BY MR. RAKOWER:

17 Q Good afternoon, Mr. Allen. I introduced
 18 myself to you off the record, but I'll just do so
 19 on the record.

20 My name is Ryan Rakower, and I'm an
 21 attorney for Morgan Art Foundation Limited. I'll
 22 be asking you questions today regarding your
 23 fact -- knowledge of facts or events underlying
 24
 25

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the claims and assertions by the parties to the lawsuit Morgan Art Foundation Limited vs. McKenzie.

A That's it.

Q If you don't understand any of my questions, please let me know, and I'll try to rephrase my question. Otherwise, I'll assume that you understood my question.

Does that work for you?

A Yes.

Q If we need a break, just let me know. I would only ask that if there's a question pending, that you answer the question pending before we take the break.

A Yes.

Q At times Mr. Markham may lodge objections to my questions. Unless directed otherwise by Mr. Markham, I would ask that you nevertheless answer the question that's pending after his objection.

Do you understand that?

A Yes.

Q Okay. For the sake of the court reporter, I would ask that you please audibly

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my questions accurately and completely?

A No.

Q And is there any other reason why you would not be able to answer my questions accurately and completely?

A Not to my knowledge.

Q Okay. Mr. Allen, are -- are you familiar with a man named Michael McKenzie?

A Yes.

Q Are you acquainted with him?

A Yes.

Q Okay. Do you work with him?

A Yes.

Q In what capacity?

A I am a sales representative, independent, and I have in the past worked alongside of him in several capacities, including -- including creative.

Q Okay. Let's start with your capacity as -- as a sales representative.

What does that entail?

A It entails he has something that I have an interest in, and I try to acquire it.

Q And are these artworks?

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answer my questions rather than nonverbal gestures, like a nod, so that your answers can be picked up in the transcript.

Do you understand that?

A Understood.

Q Okay. This deposition is being conducted remotely via video conference. Is there any reason why that would prevent you from testifying truthfully or accurately today?

A No.

Q Where are you taking this deposition from?

A From my office.

Q And where is that located?

A West new York.

Q Do you understand that you -- you swore an oath today to tell the truth?

A Yes. Of course.

Q And do you understand that's the same oath that you would give to testify in court?

A Yes.

Q Are you currently taking or under the influence of any medications, alcohol or other substances that would prevent you from answering

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A I'm sorry?

Q Are these artworks?

A Yes.

Q Okay. And specifically, does this include artworks attributed to or created by Robert Indiana?

A Yes.

Q Okay. And so would you be the buyer of those artworks from Mr. McKenzie?

A Yes.

Q And are these artworks that you would acquire for your own personal use or possession?

A No.

Q What would be the purpose of you acquiring the artworks?

A To sell.

Q And that's to sell to a -- a third-party buyer?

A Yes.

Q Okay. Do you arrange for the third-party buyer in advance of purchasing artworks from Mr. McKenzie?

A I'm sorry. Can you state that again?

Q Sure.

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Do you -- do you arrange for the third-party buyer in advance of purchasing the artworks from Mr. McKenzie?

A In advance?

Yes.

Q Is that -- is that always the case?

A It really depends on -- every situation is unique.

Q Sure.

So what's your usual practice?

A I become interested in a work of art. We're talking about Indiana. I acquire a price. I go back to my client. I give him a price, pass or play.

Q When you say you "acquire a price," that's a price that's given to you by an external third-party buyer?

A That would be the price given to me by the seller.

Q The seller is Mr. McKenzie?

A Correct.

Q Okay.

A In this -- in this instance.

Q Sure.

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A It's just a matter of keeping the integrity of the client, his wishes. He doesn't want to be -- and most collectors don't want to be known across the boards what they're doing or who they are selling to or buying from. They want to keep it to themselves.

Just a -- it's pretty standard in the industry. People don't just share their contacts, you know, unless there's a good reason. Maybe the parties know each other, etc.

But in most cases, no, I don't share my contacts.

Q And you -- you -- you refer to a "client" in that answer.

Is that -- who -- is that client Mr. McKenzie or is it the third-party buyer?

A The client is the purchaser.

We're specifically just talking about Robert Indiana and Michael McKenzie at this moment?

Q That's right.

A Yeah. Okay.

Q And when you -- when you acquire the artwork from Mr. McKenzie, how long do you take

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And we're talking about your usual practice; right?

A Yeah. The standard pattern, let's say.

Q So the standard pattern would be -- just so I have it clear and so it's clear on the record -- Mr. McKenzie would offer to sell you an artwork for a certain price; is that right?

A Yes.

Q You would purchase that artwork and then resell it to a third-party buyer; is that right?

A Yes.

Q And that third-party buyer would have already been lined up before you make the purchase from Mr. McKenzie; is that right?

A Yes.

Q Is Mr. McKenzie aware of the identity of the third-party buyer?

A No.

Q Is that always true?

A Yes.

Q Okay.

A We don't share our contacts. It's just -- doesn't make any sense.

Q Why doesn't it make sense?

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possession of it until you make a subsequent resale?

A It's unique. Every sale is different. Could be a day, could be two weeks.

Q Is two --

A You know, there's scheduling, etc. Just standard logistics protocols.

Q Is two weeks the long end of that range?

A Yes.

Q So in your typical practice, you -- if you acquire an Indiana artwork from Mr. McKenzie, you don't hold onto it yourself for more than two weeks?

A Not if I can help it.

Q Is it ever the case that you acquire an artwork from Mr. McKenzie and you don't have a third-party buyer lined up?

A There's been occasion when the buyer will fall out, and I don't have a buyer.

Q But it's your practice that if you are going to acquire the artwork from Mr. McKenzie, you at least believe that you have a buyer lined up; is that right?

A Yes.

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Q Okay. And I know you mentioned that you don't share with Mr. McKenzie, in your typical practice, the identity of the buyer; is that right?

A Yes, that's true.

Q But is Mr. -- you know, to your knowledge, is Mr. McKenzie otherwise aware that there is a third-party buyer when he sells artwork to you?

A Yes.

Q And I believe you mentioned that you've -- you've worked with Mr. McKenzie in -- in certain other capacities; is that right?

A Yes.

Q What are those capacities?

A Well, we share the creative aspect of things. I've been working with him for -- since about 2007, and I was involved early on with a Indiana campaign.

And, you know, I have -- I'm an artist in my own right, and I like to share my creative opinions, which I got to share occasionally with Mr. Indiana himself, in -- in those capacities.

I mean, sometimes I would refer to

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Mr. McKenzie for his skills. He has a lot of knowledge in the art world. Sometimes he has things that I don't know about. He might offer me an opinion. It's mostly in the creative capacity that we share those -- that information back and forth.

Q And when you talk about "the creative capacity," is -- is -- is that referring to the creation of new artworks?

A Yes. Sometimes.

Q Have you ever assisted Mr. McKenzie in -- in the creation or fabrication of -- of artworks attributed to Robert Indiana?

A No.

Q Okay. And you mentioned that you've been working with Mr. McKenzie since 2007; is that right?

A Yes.

Q Okay. Does that include your -- your work with him as -- as a sales representative?

A Yes.

Q Okay. Did you work with Mr. McKenzie at all before 2007?

A No.

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Q How long have you known Mr. McKenzie?

A 2007.

Q How often do you speak to Mr. McKenzie?

A How often?

Q Uh-huh.

A It depends on the necessity. Sometimes I've spoken to him a few times in a week, sometimes not at all for months. It just depends on the circumstance.

Q And what about this year?

A No, I've spoken to him from time to time.

Q Approximately how many times would you say you've spoken to him this year?

A I have no way of telling. I couldn't tell you that. I -- I wouldn't remember. I'd have to sit there and think about, Okay, and --

We've had reason to speak over the last year based on several things that were going on: Sales, possibility of sales, what could be done with sales, what's the problem with why Indiana's reputation is going down the drain. Things like that.

Q Have you made any sales for Mr. McKenzie

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in the past year?

A Yes.

Q And were those sales of Robert Indiana artworks?

A Yes.

Q Approximately how many artworks were you involved in selling on behalf of Mr. McKenzie?

A Three or four.

Q What were those --

A At the best -- at the best of my recollection, three or four.

Q Sure.

What were those artworks?

A A sculpture, prints. I don't think there were any canvas paintings.

Yeah. That's the best of my recollection, too.

Q Let's start with the sculpture. What -- what image was depicted on that sculpture that you helped Mr. McKenzie sell?

A HOPE.

Q And what was that sculpture made out of?

A Aluminum.

Q Do you still have that sculpture in your

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possession?

A No.

Q Did you sell it to a third-party buyer?

A Yes.

Q Who did you sell it to?

A Who did I sell it to?

Q Yes.

A I'm not at liberty to give that information out. I'm under an NCNDA with my clients. Why would I give that information out?

Q Because you're under oath, and I'm asking a question.

A (The witness shakes head.)

Q Are you refusing to divulge the identify of the buyer of that HOPE sculpture?

MR. MARKHAM: Well, if I could interject here, I believe what Mr. Allen is saying that he has proprietary interest in the confidentiality of his clients, and I think that everybody in this case has had, you know, objection to producing certain things under the grounds of confidentiality.

Ryan, what -- what's the -- what's

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the relevance to this contempt proceeding as to who he sold it to? I -- I don't understand.

MR. RAKOWER: Mr. -- Mr. Markham, are you instructing the witness not to answer, or no?

MR. MARKHAM: I'm -- I'm not instructing him not to answer. My guess is he's not going to answer. And maybe we can go to the court and -- and get some relief from it, but --

MR. RAKOWER: We --

TECHNICIAN: -- I'm not --

MR. RAKOWER: We can let -- we -- I -- I can ask the questions, and then we can let the witness answer the question. And then I can just put on the record what his answer was, and we take it from there; okay?

MR. MARKHAM: Fine.

MR. RAKOWER: But, yeah, just for the record, Mr. Markham, you're not instructing your witness not to answer; is that right?

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MR. MARKHAM: No. I'm not instructing him not to answer, but I'm telling you that he has a proprietary interest, and I think it might help if you elucidate why a -- a HOPE sculpture that he sold -- you know, maybe you should find out when it is. I don't think it has anything to do with, you know, the -- the issue of the contempt order.

But I'd try help. Forget it. Go ahead.

MR. RAKOWER: Yeah. Just --

MR. MARKHAM: Ask the questions.

MR. RAKOWER: I'll -- I'll -- I'll ask the questions, and then -- and then you can interpose any objections that you have on the record, and we can take it from there.

BY MR. RAKOWER:

Q Okay. So, Mr. -- Mr. Allen, I'm just going to ask you, because I don't think I got a clear answer my -- to my question. I think Mr. Markham objected.

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My question to you is: Are you refusing to identify the buyer of that HOPE sculpture -- the aluminum HOPE sculpture that you sold for Mr. McKenzie in the past year?

A Yes. I'm refusing to.

Q Without divulging the identity of the buyer, which you said that you're not going to do, can you tell me whether or not the -- the buyer is an individual art collector?

A An individual or a collector?

Q Art collector.

A That's one and the same thing, isn't it?

Q Can you tell me whether or not the buyer was an individual art collector?

A Yes.

Q Was he an -- he or she an individual art collector?

A Yes.

Q Okay. Have you sold artworks on behalf of Mr. McKenzie to that purchaser in the past?

A No.

Q Is that the only sculpture that you've sold for -- on behalf of Mr. McKenzie in the past year?

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A Yes.

Q And you mentioned that you sold prints on behalf of Mr. McKenzie in the past year; is that right?

A That's correct.

Q Okay. What image was depicted on those prints?

A TIKVA.

Q Were those prints created by Mr. McKenzie?

A I have no way of knowing whether they were created by him. I only know it's a Robert Indiana product.

Q To your knowledge, did Mr. McKenzie acquire those prints on the secondary market?

A I have no idea.

Yeah, I have no idea.

Q To your knowledge, when were those prints created?

A I'm going to take a guess, because I don't recall the exact time, date that they would -- they would be -- you know, Robert Indiana would be his signature and a date.

I'm going to say 2003. And I could be

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clients you purchased those Tikva prints from you?

A Yeah, I am.

Q Were those clients individual art collectors?

A Yes.

Q So we talked about your sale -- first of all, have we covered all the sales of artworks that you've done for Mr. McKenzie in the past years -- in the past year?

A To the best of my recollection.

Q Okay. And you also mentioned that you had been communicating with Mr. McKenzie in the past year regarding the potential sale of artworks --

A Yes.

Q -- is that right?

A Yes.

Q Had you discussed with Mr. McKenzie the potential sale of his entire inventory of Robert Indiana artworks?

A His entire -- no. His entire inventory, no.

Q Had you discussed with Mr. McKenzie the possibility of selling a bundle of Robert Indiana

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wrong, but that's what comes to mind.

Q And how many Tikva prints did you sell on behalf of Mr. McKenzie in the past year?

A Probably three or four.

Q And they were all of the same image?

A Yeah.

Q Okay. Were they also sold to the same purchaser?

A I think there were two separate parties.

Q Who were those purchasers?

A My clients.

Q And who were those clients?

A I'm not at liberty to give out my clients' names.

You got to understand, the people you represent, Morgan Fine Arts, and whoever else is behind -- they're competitors, and they're sharks in the art world. They will take anybody's name and call them directly and say, Hey, we have what you're looking for.

So in our world we don't give out our contacts for that reason.

Q And just so the record is clear: Are you refusing to divulge the identity of those

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artworks in his possession?

A Yes. From time to time, that did come up. I think I was -- originally originated that idea of a package sale, because my clients were interested as an investment.

Q So you have clients who -- who -- first of all, is it one or more client who came up to -- came up to you with the idea of purchasing a -- a package of Robert Indiana works from Mr. McKenzie in the past year?

A You mean, in other words, they came up to me with the idea?

Q Well, actually, why don't we take this piece by piece.

You mentioned that you had clients who were interested in purchasing a bundle of Robert Indiana artworks from Mr. McKenzie as an investment; is that right?

A Yes.

Q Okay. Is that one client or multiple clients?

A Several.

Q Several clients. Okay. And in your discussions with those clients regarding the

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prospect of that investment that we just spoke about, whose idea was it to potentially make that investment?

A Mine.

Q And how did you come up with that idea?

A After talking with clients and seeing what they wanted to do with disposable income, it came to me and it's -- I've worked for other artists in the same capacity prior to -- in my -- in my career, my last 35 years, that's not been -- it's something that, you know, we try to do.

If there's an investor who's got disposable income or has a good way to invest, would come up with the idea of a package. It could be whatever valuation to whatever. And usually, I'm trying to cobble that together, because there's usually a nice return on it.

Q And you mentioned there's -- there's "a nice return."

You're speaking about a nice return to you?

A Yes.

Q And when you purchase an artwork from Mr. McKenzie and resell it, do you take a -- a cut

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what I mean? It's going to happen in a day?

Q So you -- you mentioned in the past year that -- that you came up with the idea of the prospect of a bundle sale of Robert Indiana artworks in Mr. McKenzie's possession to outside clients; is that right?

A Yeah. I took his temperature on it.

Q Had you discussed the prospect of such a sale before 2020?

A Yes.

Q And when else did you discuss the prospect of -- of such a sale?

A Can you rephrase, please?

Q Sure.

So I had asked you if you had discussed the prospect of a sale of a bundle of Mr. McKenzie's Indiana artworks to an outside buyer?

A Okay. I wasn't just discussing Indiana artworks. We were discussing the possibility of what he might have in inventory, not just Indiana, that would make an interesting package for a collector or an investor.

Q And that would be the majority of

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of the profit?

A I'm sorry. Say again?

Q I probably phrased that question the wrong way. So maybe I'll phrase it a different way.

When -- when -- when you purchase the art -- an artwork -- a Robert Indiana artwork from Mr. McKenzie and resell it to a third-party buyer, do you take a markup?

A I mark it up, yes.

Q Do you have a standard markup that you take?

A No. Every -- every sale is unique. I mean, it -- it -- you could get an average -- you might come up with an average.

But I like to say that whatever -- whatever makes it -- makes it good all the way around, fair, and balanced.

Q And you mentioned that you might be able to come up with an average.

Approximately, what would that average be?

A Anywhere from 1 percent to 10. There's a lot of logistical aspects to that. You know

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Mr. McKenzie's inventory?

A Yeah. Sometimes it could be, you know, packaged with somebody else. Just depends. That's up to me.

Q And you mentioned that you discussed the prospect of a sale like that in the past year; correct?

A Yes.

Q Okay. Had you discussed the prospect of a sale like that previously?

A Prior to 2020?

Q Yes.

A Yes.

Q And when did you have a discussion like that?

A You know, it -- over the past, however many years, 17, 18, 19 years, it probably came up two or three times.

Q And one of those times is in the past year; right?

A One of those times is in the past year, correct.

Q Okay. And approximately what other year did you discuss the prospect of this type of sale?

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A I could only guess. Two or three times over the last ten years. None of which came to fruition. And -- and of late, mostly because Indiana's name is being bashed around so badly, that investors, when they do their due diligence, walk away.

Q And these are investors doing -- doing due diligence on the Robert Indiana works that are in Mr. McKenzie's possession?

A No. Just on Robert Indiana, period.

Q And you mentioned that you took Mr. McKenzie's temperature, I think is the way that you put it, on the prospect of selling a bundle of his artworks to an outside client in the past year; is that right?

A Yeah.

Q When did you have that -- when did you first have that discussion with Mr. McKenzie?

A I think I probably brought it up beginning of the year.

Q And that's the beginning of 2021?

A Yeah. It could have been a little bit sooner. Honestly, that's where I get very foggy. I just don't remember dates that well.

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gone on, which is a shame, but that's the way it goes in the industry.

Q Is that your understanding from your conversations with your clients?

A Oh, yes.

Q Have you had a client initially interested in purchasing artworks from Mr. McKenzie who subsequently backed out of the purchase after doing due diligence?

A I've had clients subsequently back out from purchasing Robert Indiana, not Michael McKenzie, just because of the -- the public relations going on and around and -- you know, it's very easy if you have people who can do due diligence to look and see what's on the board, especially since most of this has been trashed around in the trade -- in the trades.

So, yeah, I mean, it's -- it's a negative. Collectors don't want anything that's tainted whatsoever in any way, shape, or form. Nothing. They won't buy it.

Q Have -- have any collectors told you that they felt that Robert Indiana works owned by Mr. McKenzie were tainted?

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Q And how did you first broach the subject with Mr. McKenzie?

A I probably asked him if he had any interest in selling several works of art that I could include in a package that I was building for an investor or/collector. That was probably the opening salvo I fired.

And then we discussed what possibilities were there. And that's how it would go.

Q What was his reaction when you broached the subject with him?

A He was lukewarm. You know, it's like a -- a lot of stuff is pie in the sky. It sounds great.

Oh, let's sell, you know, \$400,000.

And I'm using that arbitrarily. I'm --

I'm not saying that was the number discussed.

It just depends. You know what I mean? It's just like you kind of try to cobble it together.

But like I said, Indiana is a particularly rough sale for -- on almost any basis, you know, for the last 24 to 36 months because of the amount of public relations that's

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A No.

Q Well, you used the word "tainted." Where did that come from?

A It comes from taking a -- a famous artist like Robert Indiana and bashing it and saying he was this way, that way, and his art might be real; it might not be real. And -- and, you know, the yet to be -- you know, all of those things play on any -- any work of art.

If just -- look, just if it's hearsay, a collector will walk away. Why would he buy anything when he knows he can buy the best art in the world that has no taint; it's blue chip, coming from a -- a famous artist, and it doesn't have any -- there's nothing -- no noise behind it whatsoever?

It's my experience collectors will walk away from anything that has any sort of scar tissue at all.

You know, I'll add one more thing to that, and that is, you know, talking about, you know, a big investment, client/investor, collector, they're not going -- they're not going to touch it, and their advisers are going to tell

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1 them, Forget it.

2 And that's happened quite a bit over the
3 last couple of years, and it's a shame.

4 Q Have you sold any artworks attributed to
5 Robert Indiana that were created after his death
6 on behalf of Mr. McKenzie?

7 A Created after his death?

8 I have no idea. How would -- that's
9 kind of -- how would you sell artworks created
10 after his death?

11 Q Are you aware that Michael McKenzie has
12 fabricated artworks attributed to Robert Indiana
13 after Mr. Indiana died?

14 A Absolutely not.

15 Q Do you understand that Mr. McKenzie
16 operates an art studio?

17 A I do.

18 Q Do you understand that Mr. McKenzie has
19 a printer on staff?

20 A That's part of the process of what his
21 work is about.

22 Q Do you understand that Mr. McKenzie has
23 a studio assistant?

24 A He has a staff. That's all I know.

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1 way. I've been working in and around Indiana.
2 I've been there at his signings.

3 Q Is it your understanding that every
4 Indiana artwork that Mr. McKenzie has sold to you
5 bearing Mr. Indiana's signature was signed by
6 Mr. Indiana himself?

7 A That's my understanding.

8 Q Did Mr. McKenzie tell you that?

9 A No.

10 Q Is it your understanding that every
11 Indiana artwork that Mr. McKenzie has sold you
12 that bears Mr. Indiana's emblem or seal was
13 stamped by Mr. Indiana himself?

14 MR. MARKHAM: Objection.

15 A Have no idea.

16 MR. MARKHAM: Objection. Lack of
17 foundation.

18 THE WITNESS: I'm sorry.

19 MR. MARKHAM: I -- I said,
20 "Objection. Lack of foundation."

21 But you can answer.

22 A Can you ask that question again, Ryan?

23 BY MR. RAKOWER:

24 Q Sure. I'm just going to read it off the
25

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1 Assistant? You mean, like, a secretary?

2 I don't know.

3 Q Are you aware that Mr. -- Mr. McKenzie
4 has created silkscreens of Robert Indiana works
5 after Mr. Indiana died?

6 A I am not aware of that whatsoever.

7 Q Is it your belief that any Robert
8 Indiana work that you've purchased from
9 Mr. McKenzie was completed prior to Mr. Indiana's
10 death?

11 A Yeah. Yes.

12 Q And is it your belief that the Robert
13 Indiana artworks, in the bundle that you had
14 discussed with Mr. McKenzie selling this year,
15 were all completed prior to Mr. Indiana's death?

16 A That would be my understanding.

17 Q Did you get that understanding from
18 speaking with Mr. McKenzie?

19 A No.

20 Q So how did you --

21 A I just assumed that anything that's been
22 made would be prior to Indiana's death if it's
23 signed by Indiana.

24 I've had no reason to assume any other
25

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1 screen. So it's the same question.

2 "Is it your understanding that every
3 Indiana artwork that Mr. McKenzie has sold you
4 that bears Mr. Indiana's emblem or seal was
5 stamped by Mr. Indiana himself?"

6 A I have no way of knowing whether he
7 personally stamped it or it was done under his
8 auspice. I have no way of knowing that.

9 It's my understanding that if something
10 is stamped "Indiana" -- I can tell you this: From
11 my knowledge of Indiana, I was around in his
12 studio when he was signing his name, and then
13 started to say, Listen, I'm not going to keep
14 signing these, because that's not what I
15 originally did. What I originally did was stamp
16 my art. Look at the pieces from 1966 or 1970, and
17 you'll see those were stamped. I had a rationale
18 for that.

19 And he explained it to us. There was a
20 bunch us. We were just sitting there, you know,
21 feeding prints to him, and he was talking about
22 his history.

23 That, I understand. So I had no reason
24 to go beyond any of that. I'm sitting looking in
25

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Indiana's eyes. He's calling me "kid. Hey, kid." You know what I mean?

And -- and over the few times that I met him, he just called me "kid." And he would explain any -- 'cause I was very interested in his history. And he was fully open about what he did in terms of signature.

That's all I know. That's everything I know about him signing.

Q So thank -- thank you for that information. I -- I -- I do think -- I'm going to ask the question one more time, because I think it calls for -- for a yes or no.

A Okay.

Q So I'll try -- I'm just going to try it one more time.

And is it your understanding that every Indiana artwork that Mr. McKenzie sold to you that bears Mr. Indiana's emblem or seal was stamped by Mr. Indiana himself?

A It -- to the best of my knowledge, yes, I -- it's my understanding that those were authorized or signed personally by Robert Indiana.

Q Is it your understanding that every

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It's a slow process.

Q And -- and did Mr. McKenzie represent to you that the Indiana artworks that he sold to you that are stamped with Mr. Indiana's emblem or seal were stamped prior to Mr. Indiana's death?

A I have no way of answering that because I don't know. It never came up. He certainly never represented it because it never came up as an issue.

Q For the artworks that were stamped with an emblem or seal, did you ever see a -- a year or date on the stamp?

A I think some of them have a date.

Q And what --

A If we're talking about -- if we're talking about his stencil stamp on the back of a -- of a -- of a work, yeah, I think they're dated.

Q That is --

A I couldn't tell you what -- I couldn't tell you what year.

Q That is what I'm telling you.

What -- what's your understanding of what they -- that year represents?

A What -- I'm sorry, Ryan. Can you repeat

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Indiana artwork that Mr. McKenzie sold to you that bears Mr. Indiana's emblem or seal was stamped before Mr. Indiana died?

MR. MARKHAM: Objection.

A I'd have to say yes, because I have no other -- I have no way of really knowing that, but I mean, I would assume that that's true.

BY MR. RAKOWER:

Q And why would you assume that that's true?

A Because I have no reason to doubt it. I've never been given any reason to doubt that what's there is -- is authorized and in his tirage.

You know, you go along with the history of the people that you work with.

Q Would it be contrary to the history of -- of your -- I'm going to strike that question.

You said you go along with the history of the people you work with. You're referring to Mr. McKenzie; right?

A And others. I have no reason to doubt people that I -- I have built a relationship with.

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it?

Q Sure.

When you see a -- a year appear on a -- a stenciled or stamped seal or -- or emblem of Mr. Indiana's, on an artwork, what do you understand that year to represent?

A Some -- well, it's different. It -- it -- it kind of fluctuates. Sometimes different artists set it up differently.

But I think Indiana basically stamped was -- and this is my opinion -- was the year of the -- of -- of the creation of that work of art. In my opinion, that's what it represented.

Q So if an artwork -- if an Indiana artwork was given to you to sell by Mr. McKenzie -- okay? -- you acquired it from Mr. McKenzie; you're going to sell it to a third party, and it's stamped with the year 2016, would you be surprised if it was stamped -- in fact, the stamp was applied in 2019?

A I would be surprised.

Q Why is that?

A Because I -- I would just assume that almost everything that is being built is -- is to

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that date. You know -- and, actually, maybe I'm thinking about it out loud now. Maybe it's not so unusual, because I don't know what understanding there is in terms of turning out product.

In a tirage, you could have pieces, at least with other artists, that are multiples, editions where they're not completed, and the artist did it in 2008, but he didn't complete the entire edition until 2010. That's very possible.

But that's just standard in the industry. So not every print is finished, even though it was created in 2008. By 2010, maybe it was all done.

And that's just my opinion about that. That's how I see it from other artists and going around. I'm not saying that's what Indiana did it, 'cause I don't know.

Q Well, you mentioned that you had met Mr. Indiana; right?

A Several times.

Q How many times have you met Mr. Indiana?

A Three or four.

Q And when was that?

A I met him in 2008, 2010. And then, I

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actually said to me several times, What do you think, kid? You like it?

I said, Yeah, I like it. I like it a lot.

He said, Well, let's put HOPE around the world.

I said, Good idea.

Q At that visit did you talk about Mr. Indiana's signature?

A No. No.

He's signing right in front of me. What's to talk about?

Hey, Bob, I like your crayon?

Q At that visit, did you speak about the application of a stencil or stamp?

A No. No. I don't think I even had any knowledge of that at that early period.

Q And let's go to 2010. You mentioned that you met with him in 2010.

A Yeah.

Q Where did you meet with him?

A In a restaurant in Rockland, Maine. We were going to go to the Island.

He said, You know what? Let's go grab

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think the last time I met him, was at the opening for the -- at the Four Seasons.

Q And when --

A I spent a lot of time with him there.

Q When was that?

A I don't know what year that was. I think it was 2015 or '14, something like that.

Q So let's start when you met him in 2008.

Where was that?

A In Vinalhaven, Maine, at the Star of Hope studio.

Q Was anyone else there with you?

A Michael.

Q And --

A And -- and several helpers, and I don't remember who they were.

You know, we were brought an edition of prints. I was never anxious to see -- you know, I had never met him, and I was very anxious to see what the hold thing was like and who he was. And I was impressed.

Q What did you talk about while you were there?

A Talked about the history of HOPE. He

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some dinner. My friend owns the restaurant. We'll use his kitchen table for the signing.

I'm, like, Okay.

And we cleared a huge aluminum table that was probably 12-foot long, and whatever prints were there -- I think they were prints.

And he said, Okay. Set it up.

And, you know, I acted just like a helper. And he kept, like -- my name was "kid" the whole time I knew him.

And, you know, I was particularly enamored of the whole HOPE project, because I thought it had a lot of merit, using HOPE in the parlance of our times.

Q What kinds of prints was Mr. Indiana signing during that visit?

A I don't remember. I -- I think they were paper, and -- and they could have been canvas. I just don't remember.

Q And what image was depicted on those -- on the artworks?

A HOPE.

Q Did you have any discussion at that meeting about Mr. Indiana's signature?

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A No.

Q And did you have any discussion about the application of a stamp or stencil?

A No.

Q Did you have any discussion about the use of -- of a machine to sign Mr. Indiana's signature?

A No.

Q And just -- just so I can clear up the record: In the 2008 discussion you had with Mr. Indiana, you also did not speak about the use of a machine to sign Mr. Indiana's signature on an artwork; correct?

A That's correct. I don't think I would have ever brought it up. It would have the last time I ever saw him.

Q Why is that? Why -- why do you think that?

A Because he was very particular about who he was and what he was doing. I -- and why would anybody suggest that he needed a machine?

He was -- he was pretty vain about his age and timing and -- you know, he was still in pretty good shape then, and he was very feisty.

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Seasons Restaurant, which is a very prestigious place to hang art.

Q And for how long were you able to speak to Mr. Indiana at that party?

A Half an hour.

And, you know, I was back and forth with him. You know, people were coming up to him and asking for signings, and this, that, and the other thing. And he was -- you know, he was holding court.

Q Was Mr. McKenzie there with you for that discussion with Mr. Indiana?

A No. He wasn't -- I mean, he came in and out from time to time, but he wasn't sitting around watching over Robert. No, he was working the floor.

Q And you were there with -- you -- you said you spoke with Mr. Indiana for approximately 30 minutes.

What did you speak about?

A We talked about HOPE a lot, because I was, like, in love with the whole process. And we talked about some history of art, and we talked about some of the other artists that I had worked

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You know what I mean. He doesn't like taking any bullshit.

Q So we have those two visits, and you mentioned that you met with him in or around 2015 --

A Yes. At the Four Seasons of Hope.

Q -- at the Four Seasons?

Okay.

A Hotel -- at the -- at the Four Seasons Restaurant where they depicted the paintings of HOPE.

Q Let's talk about that visit.

Who was there with you?

A It was a -- it was an open house party. I don't know everybody who was there.

Michael was there. I was there. Some of my clients were there. Some notaries were there. CBS was there.

There was a whole host of people, and Robert was waxing and pontificating about HOPE. And it was kind of nice to see him out in the public.

Q It was an open house party --

A It was an invitation party at the Four

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with in the past, and obviously he knew everybody that I had worked with. And mostly it was about art and about, you know, what -- what was going on in the world.

And he was really loving -- he was loving all the attention.

He actually said to me, I believe HOPE will eclipse the LOVE at that -- one of the discussions we were having was HOPE and LOVE. And we thought that HOPE was may more relevant at this time and would become more relevant as time went on. So that was kind of the -- the -- the anchor of the conversation.

Q Did you have any discussion, during that time, of the application of Mr. Indiana's signature?

A No. I can honestly tell you it's never come up in my -- in any dialogue with him about signatures, nothing, ever. And I wouldn't go there.

Q And during that conversation, you didn't discuss the application of a stencil or stamp?

A No.

Q And just -- just so the record's clear:

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You didn't have any discussion during that conversation regarding the use of a machine to apply Mr. Indiana's signature to artworks?

A No.

Q Have we covered every meeting that you've had with Mr. Indiana?

A I think so.

Q It's just those three; right?

A To the best of my recollection. I mean, there could have been a moment here or there, but I don't really recall.

Q Did you ever speak to Mr. Indiana by phone?

A I don't remember, to be honest.

Q You can't --

A It doesn't jump out at me.

Q You can't recall a -- a phone conversation you ever had with --

A No.

Q -- Mr. Indiana; right?

A If it was, it was going to be for a second.

Q And you -- but you can't recall with specificity any particular phone conversation you

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Q Okay. Did you ever discuss Morgan Art Foundation?

A No.

Q Did you ever discuss Simon Salama-Caro?

A No. I didn't even know who he was.

Q And I want to -- you know, I know we've been -- we've been taken down a number of paths, and I appreciate, you know, all the -- the information that -- that you're giving. I -- I want to bring us back, actually, to your interactions with Mr. McKenzie.

Because you mentioned that, you know, sometimes you speak with him frequently, and sometimes you speak with him infrequently, but that you've had a -- a business relationship with him that spans 14 years; is that right?

A Yes. But we have other interests not related to art. Like, he's a car collector. I like cars. I'm a car. He's a car guy. Stuff like that.

Q Would you say you're friends?

A I'd say we're friendly. I don't know if we're friends.

Q But you have a professional

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ever had with --

A No, I can't -- I can't.

Q I -- I just have to ask these questions for completeness.

A Okay.

Q You didn't -- you didn't -- you didn't text message with Mr. Indiana, did you?

A Never.

I'm sorry. That's funny.

Q And -- and -- and you never e-mailed with Mr. Indiana?

A No.

Q Okay. So --

A I didn't have his cell number.

Q So, you know, we -- we covered three different meetings that you had with Mr. Indiana.

Does that account for all of your interactions with Mr. Indiana?

A Directly, yes.

Q Okay. And so in your direct interactions with Mr. Indiana, you had no discussions about the application of his signature or a stamp or a stencil; right?

A Never.

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relationship, and you also, aside from that, share personal interests; is that right?

A Yeah.

Q And you have conversations with Mr. McKenzie that -- that don't just span the -- the -- the business side of things; right?

A Right. Like, I've seen -- I knew his -- since 2007, his kids were only knee high. Now they're grown adults.

Q And how do you -- how do you interact with Mr. McKenzie?

A How?

Q Yeah.

A Mostly -- I mean, mostly by phone.

Q So you call him regularly?

A I'm sorry, Ryan, again?

Q You call him regularly?

A Not regularly, no. Unless there's something going on, no. Sometimes -- you know, I mean, when there's a very -- there were periods when nothing was going on, and I might call just to see what was going on, you know, and there's nothing on the table. There's nothing for sale. There's nothing I -- I need or he wants or any--

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and sometimes I would just check in, as I do with all my vendors.

Q And do you call his home phone or his cell phone?

A I don't have his home number, I don't think. I think -- I don't even know if he has a home phone.

Q So the -- the calls that you're talking about are usually by cell phone; is that right?

A Yeah. I didn't know people still had home phones.

Q And did you ever meet with him in person?

A Yes.

Q And where do those meetings usually take place?

A Well, we've met in Manhattan. We've met at his studio. Like that.

Q Have you been to his studio in the past year?

A Yes.

Q Approximately how many times?

A Two or three.

Q And when you arranged to visit the

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studio, do you make those arrangements with Mr. McKenzie himself?

A Yes.

Q Do you ever text with Mr. McKenzie?

A Yes.

Q Do you ever e-mail with him?

A Yes.

Q And that includes e-mails about business, I assume?

A Mostly.

Q You would say most of your -- most of your e-mail interactions concern the -- the sale or purchase of Indiana artworks?

A Yeah. But recently I saw a Corvette for sale that I thought he'd be interested in, and I sent him an e-mail about it. Stuff like that.

Q And has that been true for, you know, the duration of your business relationship?

A I mean, there were years we didn't talk at all. He didn't love me ever year we worked together.

Q Why is that?

A Just because, you know, competition, differences of opinion. Stuff like -- just

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typical stuff among vendors. Very touchy group.

Q I probably should have asked this earlier, maybe an hour ago, but have you ever been deposed before?

A To where?

Q Have you ever been deposed before?

A Have I ever been deposed before? Yes.

Q Approximately how many times?

A Oh, once or twice over the last 50 years.

Q And what was the nature of the litigation during which you were deposed?

A That's funny. I actually don't remember, but I'm sure it was something somebody was opposing about -- about me. Maybe it was over a -- I mean, the last one was regarding art and another art -- and another artist.

That's the last one I can remember. Prior to that, I couldn't tell you why.

Q And when was that lawsuit?

A 1992.

Q Did you prep for today's deposition?

A Did I what?

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Q Did you prepare for today's deposition?

A No. I read the -- this morning I read the -- the subpoena and whatever was tagged on it.

Q Why -- actually, why don't we -- why don't we pull up the -- the subpoena. That was a good segue.

MR. RAKOWER: Bernadette, if you want to pull up Tab 1.

BY MR. RAKOWER:

Q Mr. Allen, do you see a document on your screen?

A I do.

Q You mentioned that you read a subpoena this morning. Is this the subpoena that you looked at.

A It looks like it.

MR. RAKOWER: I'd like to mark this as -- as Exhibit 1.

(Whereupon, Exhibit No. 1, Subpoena to Testify at a Deposition in a Civil Action, was marked for identification.)

BY MR. RAKOWER:

Q So you mentioned you read this document

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1 this morning. Have you -- have you read it before
2 then?

3 A No.

4 Q Do you see that it -- it directs you to
5 come to a deposition on November 5th?

6 A Yeah.

7 Q And do you see below that it -- it
8 directs you to produce documents?

9 A Yes.

10 MR. RAKOWER: All right. Why don't
11 we go to page 5 of the attached. Let's
12 go to PDF page 8. Sorry.

13 BY MR. RAKOWER:

14 Q Do you see where it says, "Documents
15 Requested"?

16 A Yeah.

17 Q Do you understand that these were the
18 documents you were asked to produce in connection
19 with the subpoena?

20 A Yes.

21 Q Have you read these document requests?

22 A Yes.

23 Q Okay. You read them this morning?

24 A Yes.

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1 Q Okay.

2 A Like, "Hey, Michael, is it quartz and
3 steel or is it aluminum?" Stuff like that.

4 Q The next -- the next document request
5 is, "Documents and communications concerning
6 McKenzie [sic] or AIA's storage of Robert Indiana
7 Works."

8 Do you see that?

9 A I have no -- no -- nothing about
10 anybody's storage or any -- anything. There's
11 just no reason for it to come up.

12 Q Has Mr. McKenzie ever mentioned to you
13 the existence of a storage facility in Middletown,
14 New York?

15 A No. And I don't know why he would. I'm
16 not going to tell him where my storage facility
17 is. I wouldn't tell anybody.

18 Q I won't ask you about that on -- on this
19 deposition.

20 "Documents and communications concerning
21 McKenzie [sic] or AIA's transportation of Robert
22 Indiana Works." That's request number 3.

23 Do you see that?

24 A Yeah.

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1 Q Did you read them at any other time
2 before this morning?

3 A No.

4 Q Okay. Let's look at category 1. It
5 says, "Documents and communications relating to or
6 concerning McKenzie or AIA's fabrication of Robert
7 Indiana Works."

8 Do you see that?

9 A Yeah.

10 I don't have any documents pertaining to
11 the fabrication of Robert Indiana Works.

12 Q Did you ever speak to Mr. McKenzie about
13 his fabrication of Robert Indiana?

14 A I'm sorry. I didn't hear the first part
15 of it.

16 Q Did you ever speak to Mr. McKenzie about
17 his fabrication of Robert Indiana Works?

18 A Only from technical points of view
19 about, you know, what's the metal? Stuff like
20 that. Or a dimension or something -- a size.

21 To that effect, yes.

22 Q And those conversations, would they be
23 had by text message or e-mail?

24 A No. They'd just be verbal.

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1 Q Have you ever discussed with
2 Mr. McKenzie the transportation of his artworks?

3 A No.

4 Q Request number 4 starts on this page and
5 goes onto the next page, "Documents and
6 communications concerning McKenzie [sic] or AIA's
7 sale of" -- and if we go to the next page --

8 A Number 11?

9 Q -- "Robert Indiana Works?"

10 A Wait. Was that number 11?

11 Q That was number 4.

12 So it --

13 A Can you -- can you go back for a second?
14 Can you go back for a second?

15 "Documents and communications concerning
16 McKenzie's or AIA's sale of Robert Indiana Works."

17 Q Do you see that?

18 A Yeah.

19 Only discussions -- yeah, well,
20 obviously, if we're -- if we're -- he's selling
21 and I'm buying, we had a discussion about it.

22 Q And you mentioned that those discussions
23 would be had over e-mail; is that right?

24 A Yeah. Like -- yeah, for technical

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 2 purposes. You know what I mean? Or for
 3 logistics.
 4 Q And sometimes those conversations would
 5 also be had over text message; is that right?
 6 A Yeah, I suppose. Yeah. Yes.
 7 Q Category 5 is, "Documents and
 8 communications concerning McKenzie [sic] or AIA's
 9 efforts or attempts to sell Robert Indiana Works."
 10 Do you see that?
 11 A Yes.
 12 Q And -- and you were involved in those
 13 efforts to sell those works; right?
 14 A That's correct.
 15 Q And you had e-mails and text messages
 16 regarding those efforts; is that correct?
 17 A Yeah. We -- I -- yeah. Yes.
 18 Q Okay. Category 5 is, "Documents and
 19 communications concerning McKenzie [sic] or AIA's
 20 efforts or attempts to conceal Robert Indiana
 21 Works."
 22 Do you see that?
 23 A Yeah, I see it. It's laughable.
 24 Q Why is it laughable?
 25 A Because it's never come up, and it

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 2 Q What's "no"? You see it; right?
 3 A I see it. I don't have any documents
 4 pertaining transferring Robert Indiana's works.
 5 To what?
 6 Q What do you understand the word
 7 "transfer" to mean?
 8 A Transfer, to move it from one place to
 9 another or a title or something like that.
 10 Q Is it your understanding that a sale of
 11 Indiana works does not constitute a transfer?
 12 A If that's what you're telling me.
 13 That's not what that spells out to me. But, okay,
 14 yeah, I could understand that.
 15 Q What would you understand?
 16 A Well, if you're using the word
 17 "transfer" as a -- as a -- the purpose of whether
 18 or not there's a piece of paper generated for its
 19 sale, then, yeah.
 20 (Whereupon, the court reporter
 21 requests clarification.)
 22 THE VIDEOGRAPHER: Can -- can we go
 23 off the record just for one moment?
 24 The time is 1:22 p.m. Going off
 25 the record.

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 2 wouldn't. And if it -- if it did come up, it
 3 would be something that I would reject
 4 wholeheartedly.
 5 Q Why would you reject that?
 6 A Why would I want to conceal Robert
 7 Indiana's Works?
 8 I told you, if you taint any piece of
 9 art, for any reason, it becomes worthless. And
 10 I'm not interested in buying worthless works of
 11 art, certainly not for my clients.
 12 Q Is it your belief that the Robert
 13 Indiana works in Mr. McKenzie's possession are
 14 worthless?
 15 MR. MARKHAM: Objection.
 16 A Well, no.
 17 BY MR. RAKOWER:
 18 Q Number -- document request number 7 is,
 19 "Documents and communications concerning McKenzie
 20 [sic] or AIA's efforts or attempts to transfer
 21 Robert Indiana Works."
 22 Do you see that?
 23 A Yeah. "Documents...communications
 24 concerning McKenzie [sic] or AIA's efforts or
 25 attempts to transfer" -- no.

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 2 (Whereupon, there was a recess
 3 taken from 1:22 p.m. to 1:24 p.m.)
 4 THE VIDEOGRAPHER: Back on the
 5 record 1:24 p.m.
 6 MR. RAKOWER: Could we put back
 7 the -- the exhibit on the screen?
 8 BY MR. RAKOWER:
 9 Q Mr. Allen, do you see the exhibit?
 10 A Yeah. "Documents and communications
 11 concerning McKenzie [sic] or AIA's effort [sic] or
 12 attempts to transfer Robert Indiana Works."
 13 The only thing that we would transfer,
 14 we would share receipts, like any standard sale.
 15 That's the only attempt, if that's an attempt or
 16 whatever you might call it. That's -- yeah.
 17 Okay. That's -- that's my understanding of what
 18 you're asking.
 19 Q You share receipts with Mr. McKenzie?
 20 A Purchase order, sales receipt.
 21 Q Do you do that electronically?
 22 A Yeah.
 23 Q You e-mail those purchase orders and
 24 sales receipts to Mr. McKenzie?
 25 A Yes.

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Q Okay. And by the way, you -- I'm not going to ask if you've memorized Mr. McKenzie's e-mail address, but is it something along the lines of mm2uwords@aol.com?

A To be honest, I've never really looked, you know, because I have a name, and it just says whatever nickname I give it. So I couldn't tell you.

Q Okay.

A And honestly, I get so many e-mails and spams every day. I mean, I get a lot of e-mails from everybody. I don't read them all. I just don't.

I'm not a big social media person. I'm not on Facebook.

Q Would you say that you e-mail Mr. McKenzie more or Mr. McKenzie e-mails you more?

A Like, when we have something to discuss, he'll be proactive. Michael likes to chat, and he'll send -- you know, he'll send something about, Did you see this auction record? Or blah, blah, blah, blah.

So, Michael, yes, is probably a little

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more proactive online than I am.

Q The next document request is document request number 8 --

A Yeah.

Q -- and it's, "Documents and communications concerning McKenzie's or AIA's affixation of Robert Indiana's signature or emblem on Robert Indiana Works, including through the use of a stencil or Ghostwriter."

Do you see that?

A Yes.

Q And --

A I have no knowledge of any of that. None. Nothing. Zero.

Q The next topic is, "Documents and communications concerning Robert Indiana's authorization or approval or permission for McKenzie or AIA to sign Indiana's signature on Robert Indiana Works."

Do you see that?

A Zero. Nothing. Nada. It's never come up.

Q You've never had --

A There's never been even a discussion.

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Q There's never been a discussion between you and anybody about this topic?

A Never.

Q Okay.

A There's never been a reason.

Q Okay. Request number 10, "Documents and communications concerning McKenzie's or AIA's efforts to" -- "or attempts to establish trusts to hold Robert Indiana Works."

Do you see that?

A Yeah, I see it.

First of all, no. Second of all, it's none of my business.

But, no, it's never come up for me.

Q You've never had any discussions regarding this; right?

A No.

Q Okay.

When you have purchased Robert Indiana works from Mr. McKenzie, have you ever resold them to a trust?

A No.

Q Okay.

A No. That's the client's job. If I

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had -- I mean, I'll sell it to -- whatever the client would like me to put it into.

But, no, specifically I don't recall selling anything to a trust or anything the likes of that even.

Q Have you ever recalled -- strike that.

Let's do this: Request 11 is, "Documents and communications concerning any of the issues and alleged facts in the complaint."

Do you see that?

A No, I've never had any discussion about the complaint.

Q Can we --

A I never read it. I still haven't read it.

Q You've never read the complaint?

A Just what I read in the papers, which really pissed me off. Once again, it's tainting Robert Indiana's name while everybody else is getting paid, including you.

Q Let's flip to page 16 of the PDF.

A Fifteen?

Q Sixteen.

Okay.

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A Okay.

Q Did you -- did you -- when you read the subpoena for the first time this morning, did you notice that this complaint was attached to the subpoena?

A I did. But all I noticed was who was the plaintiff and who was the defendant. And I kind of understood what it -- what the complaint was. So I was, like --

Q But you mentioned that you didn't read it; right?

A I didn't read it in detail, no. I skimmed it.

Q This morning?

A This morning.

Q Let's go back to the document requests on PDF page 9 [sic].

And the last -- the last line is, "Documents related to the events, facts, artworks, or circumstances described in the attached declaration of Osvaldo Gonzalez."

Do you see that?

A Yeah. I only heard his name for the very first time in the document, and all I know is

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A I did.

Q Was the first time you read the declaration this morning?

A Yeah. And, you know -- and I can't remember what it says, and I don't know where I put it, but I printed it out.

Q All right. And just so the record is clear: Since you read the subpoena this morning and you looked at the declaration, and you mentioned you may have skimmed the complaint, did you take any efforts to collect or produce documents responsive to the subpoena?

A No, because I -- in my mind, I had none, other than, you know, what I do with my clients, which I'm not willing to just hand over to my competitors so that they can have a list of the people I sold art to.

No. You're going to have to do a little -- you're going to have to work a little harder.

Q And prior to this -- this deposition, did you give Mr. Markham access to your e-mails or text messages?

A Access to my e-mail?

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I don't know this guy. I don't know what he does or why.

He -- I read the line where my name is mentioned from him. I never met this guy. I don't know him. I have no reason to know him. And how he knows me is a miracle.

Q Let's flip to the next page of the PDF.

When you reviewed the subpoena this morning, did you notice that this declaration was attached to the subpoena?

A I did.

Q Okay. And you -- you -- did you read the declaration?

A I skimmed it down to where I took out where my name was, and I printed it out somewhere here. I think it was page 11 or something like that.

Anyhow, my name is mentioned twice in two lines.

Q Okay.

A And that's what I saw.

Q You mentioned that you printed out the declaration.

Did you do that this morning?

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Q Yes.

A Why -- why would I do that? Other than -- you mean, are we e-mailing back and forth?

Q No. I'm going to -- I'm going to ask the question again.

Prior to this deposition, did you give Mr. Markham access to your e-mails or text messages?

A No.

Q Okay. Did you give anybody else at Mr. Markham's firm access to your e-mails or text messages?

A No.

Q Okay. Do you ever sell artworks --

MR. RAKOWER: We can take the exhibit off the screen. Thank you.

BY MR. RAKOWER:

Q Does Mr. McKenzie ever transfer Indiana artworks to you to sell on consignment?

A No.

Q He always sells it -- he always sells it to you outright?

A Yeah. Usually, there's a purchase order, and it's like -- yeah. That's right.

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Q Do you ever sell the artworks to other dealers?

A Yes.

Q Approximately what percentage of your sales are to other dealers?

A I don't know. It's -- it just depends on the year and the -- and the flow, the way things are going, who's doing what, price.

It's all logistics. How do you make it work?

Q So we discussed in the -- in the past year a few instances where you sold Robert Indiana artworks that were sold to you by Mr. McKenzie; is that right?

A Yes.

Q Okay. And those instances, each -- in each instance, the purchaser of -- the ultimate purchaser of the artwork was a collector; right?

A Yes.

Q Okay. When's the last time you purchased a Robert Indiana artwork from Mr. McKenzie and sold it to another dealer?

A I can only take a wild guess. Sometime in the beginning of 2020.

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And the answer is no to all of them.
BY MR. RAKOWER:

Q Okay. Let's just go through them. Actually, let's go back to -- to 46.

Mr. Allen, I'm just going to -- I apologize, but I've got to go one by one.

A Yeah. No worries.

Q So do you see the image on the right?

A I do.

Q Did you ever purchase that artwork from Mr. McKenzie?

A No.

Q Have you ever discussed selling that artwork for Mr. McKenzie?

A No.

Q All right. Let's go to the next page.

Do you see the image on the right?

A (The witness nods head.)

Q Did you ever sell that artwork for Mr. McKenzie?

A No.

Q Did you ever purchase that artwork for Mr. McKenzie?

A No.

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Q And what artwork was that?

A HOPE.

Q What kind of HOPE?

A Sculpture.

Q Does Mr. McKenzie ever make payments to you?

A No.

Q I just want to go over some of the Robert Indiana artworks that you purchased from Mr. McKenzie and then resold; okay?

You mentioned HOPE?

A HOPE.

Q Okay. Have you ever purchased one of the Dylan artworks from Mr. McKenzie?

A What Dylan artworks?

There's a Bob Dylan HOPE?

Q Why don't we -- can we pull back up the subpoena, and I'll give you the PDF page to go to.

A Okay.

MR. RAKOWER: Bernadette, can we go to PDF page 46?

And let's scroll down to -- to 47.

Actually, let's go to the next page.

A I remember looking at all these images.

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Q Did you ever discuss purchasing that artwork for Mr. McKenzie?

A No.

Q Okay. Let's go to the next page.

This artwork on the right, this is page 33 of the complaint.

A No.

Q Did you ever purchase this artwork for Mr. McKenzie?

A No.

Q Did you ever sell this artwork for Mr. McKenzie?

A Never sold it.

Q Did you ever discuss selling this artwork for Mr. McKenzie?

A No.

Q Okay. Next page. This is page 34 of the complaint.

Do you see the artwork on the right?

A Yes.

Q Did you ever sell this artwork for Mr. McKenzie?

A No.

Q Did you ever purchase it from him?

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A No.

Q Did you ever discuss selling this artwork for Mr. McKenzie?

A No.

Q Okay. Let's go to the next page.

Do you see the artwork on the right?

A Yes.

Q Did you ever purchase this artwork from Mr. McKenzie?

A No.

Q Did you ever sell this artwork for Mr. McKenzie?

A No.

Q Did you ever discuss selling this artwork for Mr. McKenzie?

A No.

Q Okay. And then for the record, that's the artwork on page 35.

Let's go to the next page, page 36.

Do you see there are two -- two artworks on the right side of your screen?

A Yeah.

Q Okay. Did you ever sell either of these two artworks for Mr. McKenzie?

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A No.

Q Did you ever purchase either -- either of these two artworks from Mr. McKenzie?

A No.

Q Did you ever discuss selling or purchasing either of these two artworks for Mr. McKenzie?

A No.

Q Let's go to the next page. It's page 37 of the complaint.

Do you see the image on the right?

A Yes.

Q Did you ever purchase this from Mr. McKenzie?

A No.

Q Did you ever sell this artwork for Mr. McKenzie?

A No.

Q Did you ever discuss selling or purchasing this artwork with Mr. McKenzie?

A No.

Q Okay. Let's go to page 38 of the complaint.

Do you see there are two images on the

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right?

A Yes.

Q Did you ever sell either of these two artworks for Mr. McKenzie?

A No.

Q Did you ever purchase either -- either of these two artworks from Mr. McKenzie?

A No.

Q Did you ever discuss the sale or purchase of these artworks from -- with Mr. McKenzie?

A No.

Q Okay. Let's go to the next page, page 39.

Do you see the image on the right?

A Yes.

Q Did you ever discuss selling or purchasing this artwork with Mr. McKenzie?

A No.

Q Did you ever sell this artwork for Mr. McKenzie?

A No.

Q Did you ever purchase this artwork from Mr. McKenzie?

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A No.

Q Okay. Let's go to the next page, page 40 of the complaint.

Do you see the image on the right?

A Yes.

Q Did you ever purchase this artwork for Mr. McKenzie?

A No.

Q Did you ever sell this artwork for Mr. McKenzie?

A No.

Q Did you ever discuss with Mr. McKenzie the prospect of selling or purchasing this artwork?

A No.

Q Let's go to the next page, page 41. And this is the last page of this exercise.

Do you see the two images on the right?

A I do.

Q Did you ever purchase either of these two images from Mr. McKenzie?

A No.

Q Did you ever sell artworks bearing either of these images for Mr. McKenzie?

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A No.

Q And did you ever discuss with Mr. McKenzie the prospect of selling or purchasing either of these two artworks?

A No.

Q Okay.

MR. RAKOWER: We can take -- we can take down the exhibit. Thank you.

BY MR. RAKOWER:

Q Have you ever purchased a LOVE artwork from Mr. McKenzie?

A Yes.

Q Approximately how many LOVE artworks have you purchased from Mr. McKenzie?

A One. Quite a while ago. I couldn't tell you what year, but it was a while ago, five or six years ago.

Q What kind of artwork?

A LOVE on metal -- on aluminum, 24-by-24 inches, red/gren/blue.

Q You remember that?

A Yeah, I do, 'cause it's the Indiana icon, the colors in the LOVE.

Q How much did you purchase that artwork

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for?

A I don't remember. I really don't.

Q Did you resell that artwork?

A I did.

Q Who did you sell it to?

A I'm not at liberty to say.

Q Are you refusing to divulge the identity of the person that you sold that artwork to?

A Yes.

Q Okay. Was that an individual collector?

A Yes.

Q How did that sale by Mr. McKenzie to you come about?

A Honestly, I don't recall.

Q Did you engage in negotiations with Mr. McKenzie regarding that sale?

A Negotiations?

Other than a price, an agreement, and a sale, that's the negotiation.

You mean, like, haggling or something like that?

A No. You don't haggle with Michael.

Q Did you enter into a written agreement with Mr. McKenzie regarding that sale?

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A A purchase order and a receipt.

Q And you transmitted that purchase order and receipt to Mr. McKenzie?

A Yes.

Q Did you do that over e-mail?

A Yeah.

MR. RAKOWER: Okay. I want to pull up Tab 2.

BY MR. RAKOWER:

Q Mr. Allen, do you see a document on your screen?

A Yeah, I see it.

Q This was Exhibit 2 introduced at Mr. McKenzie's deposition a couple months ago.

MR. RAKOWER: I'd like to also mark this as Exhibit 2 for this deposition.

(Whereupon, Plaintiff's Exhibit No.

2, Photograph of Spreadsheet, was marked for identification.)

BY MR. RAKOWER:

Q Mr. Allen, if you look where it says, "7. LOVE (Red Metal)."

Do you see that?

A I do.

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Q Okay. Is this the artwork that you were talking about?

A I have no way of knowing that. I don't remember the number or the piece. I -- I couldn't tell you.

Q Okay. Let's go to the third line under "7. LOVE (Red Metal)."

A Yeah. Okay.

Q Do you see it says, "'Book of Love.' Red/Green/Blue"?

Do you see that?

A Yeah, I see it.

Q And it says that, "G. Allen bought 3/24/14 [sic]."

Do you see that?

A I can't -- I --

Q It's on the right.

A It's blocked by the video. Wait a minute. I can't see it.

Hold on a second. Let me see if I can reduce this.

No, that didn't work.

All right. "Bought 3/23/14." Yeah.

Okay. That sounds about right.

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Q You bought that artwork from Mr. McKenzie?

A "Red/Green/Blue," yeah.

Q And you bought that on or around March 23rd of 2014?

A Right.

Q Okay. And before that it says, "Consigned to Gregory Allen 8/23/13."

Do you see that?

A I see it.

Q Okay. Did Mr. McKenzie consign this artwork to you to sell?

A I'm going to say I don't -- I -- I mean, that's a loose term.

Sometimes a consignment could be that I didn't pay for it for two weeks. So it was consigned, and maybe that's how they wrote it up.

Q Well, do you -- do you see that the consignments referenced here refers to a date that's August 23rd, 2013?

Do you see that?

A Yeah.

Q And that's a -- that's seven months before it says you bought the artwork in

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March 23rd, 2014.

Do you see that?

A Yeah, I see it.

3/23 consigned -- it doesn't make any sense to me. I don't know -- I don't know how to refer to it.

I don't recall any of this. I'm sure it's somewhat accurate.

Q Do you have any reason to doubt the accuracy of this?

A Only the term "consigned," cause, you know, maybe -- maybe I had agreed to pay for it, and it didn't come through, and I didn't pay for it. So Michael could say it was consigned to me.

He was pretty good about it. And sometimes I was late or tardy and -- you know, we had our differences. Like I said, there were years when he didn't talk to me.

Q So let's -- let's go down in the second-to-last line and -- and the column that we're looking at says, "'Book of LOVE' Red/Green/Blue. V/V. R. Indiana '96." And it says, "Returned from Greg Allen 5/1/13."

Do you see that?

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A Yeah.

Q Did you ever return a LOVE artwork to Mr. McKenzie?

A Probably. 'Cause sometimes the client would like blue/green/red, red/green/blue, and we'd give them the option of seeing it. And the one he didn't take, we'd send back.

Q All right.

A You know, it's, like, I'm not -- I -- I prefer to not deal with clients who want to know if it matches their drapes, 'cause it gets really -- I can tell you how many times I've been on my knees in some billionaire's penthouse wishing I had never been there.

Q So at the -- at the very bottom it says, "NOTE: Text to Gregory Allen 5/6: Red/Green/Blue available if party is interested in buying."

Do you see that?

A Yeah.

Q Okay.

A Do I recall it?

No. But, yeah.

Q Do you have any reason to doubt that Mr. McKenzie texted you that --

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A No.

Q -- the red/green/blue --

A No, not at all.

Q -- LOVE was available?

A Just if we were transacting back and forth about a particular piece in an inventory. There was, you know, three versions of red/green/blue or whatever the case may be. And I was trying to make the client happy, and Michael was trying to accommodate me.

Q So is it your belief that there's probably a text from May 6th of some year from Mr. McKenzie to you stating that a LOVE artwork was available if a party was interested in buying?

A I have no way of remembering that. That's 2013?

Q I --

A That's --

Q Of any year?

A Yeah. I would -- I have no way of recollecting that. I can't remember what happened yesterday.

Q Is it your understanding that where it says "Red/Green/Blue," that's referring to a LOVE

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artwork?

A It's referring to a colorway in the way in which it's laid out on the canvas.

Q And by "it" you mean the LOVE image; right?

A Yeah.

Q Okay. We can put this -- this document to the side.

(Whereupon, the court reporter requests clarification.)

THE WITNESS: Colorway.

COURT REPORTER: Thank you.

THE WITNESS: W-a-y.

BY MR. RAKOWER:

Q Has Mr. McKenzie ever spoken to you about Morgan Art Foundation?

A No.

Q Mr. McKenzie ever --

A I may have spoken to him about them and had questions about who they were, but that would be a while ago, not in this year.

Q And did he respond to those questions?

A Yeah. But I can't recall what exactly -- you know, I mean, you talk about

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Q Has Mr. McKenzie ever spoken to you about Simon Salama-Caro?

A No.

Q Has Mr. McKenzie ever spoken to you about the rights to the LOVE artwork?

A I may have spoken to him about it when it started to come up in the trades about whether or not there was a copyright infringement by the Morgan Arts people, because people started to back away from it.

And like I said, if you taint anything, the collectors and the buyers are -- are -- they're -- they're walking away.

Q And you -- you mentioned that you may have spoken to him, Mr. -- Mr. McKenzie, about a potential copyright infringement -- infringement by Morgan Art Foundation; is that right?

A No, I didn't say that.

Q Well, I'm looking at the transcript, and it says, "I may have spoken to him about it when it started to come up in the trades about whether or not there was a copyright infringement by the Morgan Arts people."

A No. I -- I have spoken to him about

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vendors and people in the industry all the time.

You know, I was selling or trying to sell LOVE sculptures. It had nothing to do with Michael McKenzie. And so my interest was in knowing where to get them. And, you know, I was trying to dig down at that time. I recall asking Michael if he had a better resource for -- than I did for getting at Morgan Arts Foundation to buy directly from them.

You know, you kind of look to find the best resource that you can for something 'cause they -- you know, there were periods of time when everybody was demanding a LOVE piece, and they were in high demand. And there were quite a few LOVE sculptures around.

So, yeah. For that purpose, yeah.

Q What has Mr. McKenzie told you about Morgan Art Foundation?

A Told me?

Nothing. Nothing historically, no. I mean, tell -- that they -- they are -- I don't even know if he told me that.

I think what I know about Morgan Art Foundation is what I read in the trades.

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Morgan Arts Foundation and who they were.

Whether or not there was an infringement, I don't know if I spoke to Michael. I probably spoke to any other people that had any reason to discuss whether or not there was an infringement on a copyright. It didn't have to be Michael. It could have been anybody.

'Cause there was some -- you know, it was a topic of discussion in the industry amongst vendors. Are these legitimate works of art for sale? And is it going to be a problem and -- and some -- some, you know, comeback after a sale of a LOVE piece?

I mean, potentially from what I could construe so far, it looks like they've got a huge problem if there is no copyright. And I don't know whether there -- there is or there isn't. That's all I know.

And it's -- you know, it's a topic of conversation. It's curious -- it's curious. They're stamped copyright. Let me see. 1990 -- 2000 -- 1996 to 2009, I think is how the LOVEs are stamped, and then the copyright seal is on it. I've stayed away from it. As soon as --

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like I said, as soon as it became a topic of potential anything incorrect, it's just -- who needs the headache?

Q Has Mr. McKenzie ever discussed with you the prospect of selling you a LOVE artwork since 2013?

A Just the one I mentioned, and that was LOVE on metal. That wasn't the sculpture.

Q Were there any LOVE artworks included in the bundle of artworks that you had discussed --

A No.

Q -- Mr. McKenzie potentially selling?

A No. Not to my recollection, no.

Q Let's talk about a few other artworks.

Are you aware of a Robert Indiana artwork called EAT?

A Yeah.

Q Okay.

A Yes.

I'm sorry.

Q Have you ever purchased an EAT artwork from Mr. McKenzie?

A No. Not from anybody.

Q Okay. Are you aware of a Robert Indiana

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artwork called ART, A-R-T?

A Yes.

Q Have you ever purchased an ART artwork from Mr. McKenzie?

A No.

Q I think we spoke earlier about TIKVA.

You've purchased TIKVA works from Mr. McKenzie; right?

A Yes.

Q Okay. And you've sold TIKVA works that you've purchased from Mr. McKenzie?

A Yes.

Q What about, are you aware of a Robert Indiana artwork called AHAVA?

A I am aware of it.

Q Have you ever purchased an AHAVA artwork from Mr. McKenzie?

A No. But if you know where one is, let me know.

Q Why is that?

A Because they're rare.

Q Are you aware of the -- the Alphabet artworks?

A I am.

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Q Have you ever purchased any Alphabet artworks from Mr. McKenzie?

A No.

Q Are there other images we haven't spoken about that you've -- that are Robert Indiana artworks that you've purchased from Mr. McKenzie?

A No.

Q And just so we're clear of the type of artworks that you've purchased from Mr. McKenzie, you've purchased sculptures; correct?

A Sculptures, yes.

Q You've purchased prints?

A Yes.

Q Paintings?

A Yes. In the early days of HOPE.

Q What other types of artworks have you purchased from Mr. McKenzie?

A That's it. Related to Robert Indiana.

Q Okay. Approximate -- approximately how many artworks have you purchased from Mr. McKenzie?

A You mean from the time I've known him till now?

Q Correct.

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MR. MARKHAM: Asked and answered.

THE WITNESS: Okay.

BY MR. RAKOWER:

Q You -- you can answer, Mr. Allen.

A I couldn't give you an exact number.

Q Could you give me a range?

A Yeah, I suppose.

Somewhere between zero and ten.

Q Zero and ten artworks since the time that you met Mr. McKenzie you've purchased from him?

A Yeah. And like I said, I can't remember every piece of art that I've sold. I've sold Indiana artworks that don't relate at all to McKenzie.

Q Well, Mr. -- Mr. Allen, you've testified that you've purchased at least three different artworks from Mr. McKenzie in the past year; is that right?

A That's right.

Q So it can't be zero; right?

A Right. It's not zero. I don't remember how many pieces from zero -- from 2007 to now. I don't -- I don't recall at all.

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Q But it was -- it's not zero; correct?

A It can't -- it wasn't -- it wasn't 20 or 30 or 40 pieces in the entire history of my relationship with McKenzie. It wasn't. And if it was, it wasn't related directly to Robert Indiana or HOPE.

Q So you're saying it's -- it's fewer than 20 pieces?

A Yeah.

Q I think --

A To the best of my recollection.

Q I think today we've discussed at least five pieces; right?

A Sure.

Q Approximately how much have you paid Mr. McKenzie for Robert Indiana artworks?

A I don't -- I don't know, and I -- I -- I've never added it up. I don't know what to tell you how much that would be. I'd just be guessing, and I don't want to guess.

Q What's the lowest amount you've paid for a Robert Indiana artwork?

A The lowest?

Q Yeah.

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A From 2007 to now?

Q Correct.

A Yes.

Q Okay. Is it fair to say that you've purchased at least a half of a million dollars' worth of Robert Indiana artworks from Mr. McKenzie?

A Yes.

Q Okay. Is it fair to say that you've purchased at least a million dollars' worth of Robert Indiana artworks from Mr. McKenzie?

A I don't -- I couldn't answer that. I don't know. I don't think it was a million dollars.

I don't know. I just don't really know how to tell you the answer to that one.

Q And of the -- of the -- whatever the total is that you paid Mr. McKenzie over the years to purchase artworks from him, approximately what percentage of that total was paid for HOPE works?

A I don't know.

Q Okay. And approximately what percentage of that total was paid for LOVE artworks?

A 1 percent.

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A I don't know. I don't know. A dollar. I don't know.

It's not a dollar. I don't know.

Q Okay. You mentioned you purchased a -- a sculpture from Mr. McKenzie in the past year; correct?

A Right.

Q Okay. How much did you pay for that sculpture?

A I don't remember.

Q Was it more or less than a thousand dollars?

A It was more.

Q Was it more or less than \$10,000?

A More.

Q Was it more or less than a hundred thousand dollars?

A Less.

I don't know the exact amount. And every -- every sale is different.

Q Is it fair to say that you have purchased at least hundreds of thousands of dollars' worth of Indiana artworks from Mr. McKenzie?

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Q We discussed purchase orders and receipts.

Do you remember that?

A Yes.

Q Have you entered into any other written contracts or agreements with Mr. McKenzie?

A No.

Q Have you ever had discussions with Mr. McKenzie regarding his rights to fabricate artworks?

A Absolutely not.

Q Has Mr. McKenzie ever talked to you about the prospect of closing his business?

A No.

Q Have you ever had discussions with Mr. McKenzie -- sorry. Strike that.

You mentioned that you had discussed with Mr. McKenzie in the past year the prospect of bundling a number of artworks and selling them to you?

A Yeah.

Q Okay.

A Yes.

Q Did Mr. McKenzie ever share with you a

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list of his inventory?

A No, not a -- I mean, a full list of his entire inventory?
No.

Q A list of any of his inventory?

A No. Because I would normally bring it up and say, you know -- or I'm referring to maybe some images that I have in a book or something. And, you know, you have to start somewhere.

Well, is this available? Is that available? Can I -- can we do this? Can we do that?

That's the kind of discussion we had about packaging sales.

Q Can we go back to Exhibit 1 and go to PDF page 10.

This is the declaration that we discussed before.

Do you remember that?

A Yes.

Q Okay. And you mentioned that you -- you reviewed this this morning; is that right?

A I did.

Q And you mentioned that you noticed that

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Q It says, "Specifically, McKenzie devised a plan to" -- "to sell the artworks he wanted to conceal to an individual named Greg Allen."

A Yeah.

Q Now, I want to stop there because it is true that you purchased artworks from Mr. McKenzie; right?

A Yes.

Q You purchased Indiana artworks from Mr. McKenzie --

A That's correct.

Q -- over the past 14 years; is that right?

A Yes.

Q Okay. And that includes, you know, at least four artworks in the past year; right?

A Yeah.

Q Okay. And you mentioned that you'd never met Osvaldo Gonzalez; is that right?

A I wouldn't know him if he was standing right next to me.

Q Okay. But Mr. Gonzalez did know that Mr. McKenzie sold artworks to you; right?

A I have no way of knowing that. I don't

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your name was in the declaration; is that right?

A Yes. Twice.

Q So let's go to -- sorry -- try PDF page 14.

Okay. And let's specifically look at paragraph 16.

A Okay.

Q Can you see it on your screen?

A I -- I -- I see it, yeah.

Q Okay. Do you notice that this paragraph mentions your name?

A I do.

Q Excuse me.

A It's okay.

Q I'm going to read part of the paragraph to you.

A Okay.

Q It says, "In addition to hiding the artworks by shipping them off the property, McKenzie also planned to conceal the artworks through a sequence of transfers that would hide their true ownership. Specifically" --

A I'm laughing because it -- it's like a bad novel.

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know this guy. How would I know that?

I don't know who he is. I don't know why he's using my name. I've never had a word, a letter with this guy or I -- if I was in his presence, I've never heard his name mentioned.

Q Okay. Let's -- let's go to the next sentence. "Allen would then transfer the artworks to various trusts, which McKenzie intended to set up in Panama or Nevada" --

A You think this is as ludicrous as I do; right?

Q -- "and which would name McKenzie's son as the sole beneficiary."

Do you see that?

A Yeah.

Q Okay.

A What --

Q Have you ever --

A By the way, let me ask you, what's in this for me? If I'm doing this, what's in it for me? Jail time?

Q Why do you say that?

A I'm joking, because it's -- you know, I mean, it's like -- you can't conceal art and sell

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1 it. It's ruined. It's over, done.

2 It's not something that I would -- would
3 traffic in at all, in tainted art. You take art
4 and you hide it, and then you come out and you try
5 to sell it?

6 It's useless.

7 Q What makes you mention jail time?

8 A Because it reads like a bad idea.

9 Q Why is it a bad idea?

10 A Because it reads like somebody, like, is
11 trying to hide something. Why would you hide art?

12 It's -- it's the -- it's the absolute
13 antithesis of the wrong thing to do. You're not
14 going to hide art and then be able to sell it.

15 Why would I want to do that?

16 Q Have you ever purchased an artwork from
17 Mr. McKenzie and then transferred the artwork to
18 somebody in Mr. McKenzie's family?

19 A Never. The only time I ever heard this
20 notion is in this document. That's why I -- you
21 know, I mean, the whole thing is silly. It's a
22 joke. And I don't like people putting my name in
23 concert with anything like this, because it's
24 useless.
25

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1 THE VIDEOGRAPHER: Going off the
2 record at 2:06 p.m.

3 (Whereupon, there was a recess
4 taken from 2:06 p.m. to 2:11 p.m.)

5 THE VIDEOGRAPHER: Back on the
6 record. 2:11 p.m.

7 MR. RAKOWER: Mr. Allen, I have no
8 further questions but I just -- I do --
9 I do need to make a reservation of
10 rights on the record before I -- I close
11 out.

12 Mr. Allen, thank you for -- for
13 taking the time to answer my questions
14 today. And I appreciate --

15 THE WITNESS: Thank you, Ryan.

16 MR. RAKOWER: I appreciate you
17 being, generally, forthcoming to the
18 answers to my questions aside from a few
19 limited instances regarding the identity
20 of the -- the purchaser of -- purchasers
21 of artwork -- Indiana artworks that you
22 sold, and we are going to reserve all
23 rights with respect to that.

24 I also just do need to make a
25

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1 Q I want to go -- later in the paragraph,
2 it says, "McKenzie told me that he was advised by
3 certain people that this plan would result in a
4 fraudulent transfer of assets."

5 Do you see that?

6 A I see it.

7 "McKenzie told me that he was advised by
8 certain people that this plan would result in a
9 fraudulent transfer of assets."

10 Q Have you ever had any discussion
11 regarding the prospect that a transfer of artworks
12 by Mr. McKenzie would be a fraudulent transfer?

13 A Would be a what transfer?

14 Q Fraudulent transfer.

15 A Never.

16 Q Okay.

17 MR. RAKOWER: We can put this
18 document to the side.

19 You know, I -- I think, John, if we
20 want to take a five-minute break, I
21 think that I may be done.

22 Mr. Allen, would that work for you?
23 I just need five minutes to collect my
24 thoughts.
25

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1 reservation of rights regarding the lack
2 of a document production in connection
3 with the subpoena. The witness
4 indicated that he had not read the
5 subpoena until -- or its document
6 requests until this morning. And in
7 response to a number of my questions,
8 the witness indicated that he did, in
9 fact, possess e-mails or text messages
10 regarding certain of the -- the topics
11 which have not been produced by the
12 witness, nor by -- by the defendant in
13 this action, who was -- who also had
14 been party to those e-mails or text
15 messages.

16 So we are going to reserve the
17 rights to seek to compel those -- those
18 documents and communications, which are
19 called for by the subpoena, which the
20 witness did not object to, and also, you
21 know, possibly hold the deposition open
22 or reopen it depending on what we see in
23 those documents.

24 And with that, I have no further
25

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2 questions.

3 Thank you, Mr. Allen.

4 THE WITNESS: Thank you. Thank
5 you, Ryan.

7 CROSS-EXAMINATION

9 BY MR. MARKHAM:

10 Q Good afternoon, Mr. Allen.

11 You and I have had several discussions
12 about the subpoena long before this morning;
13 correct?

14 A Yes.

15 Q And during those discussions, I
16 specifically discussed with you the content of the
17 subpoena, which I had sent to you; correct?

18 A You did.

19 Q So while you didn't read those
20 categories before this morning, I read them to you
21 and asked you if you had any and you said no;
22 correct?

23 A That's correct.

24 Q All right. And then last night again,
25 for about what, the third or fourth time we

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2 discussed this? About three or four times?

3 A Yes.

4 Q And last night did I or did I not say,
5 "Why don't you take a look at the subpoena just to
6 make sure that you don't have any such documents?"

7 A Right.

8 Q And you did; right?

9 A Yeah.

10 Q But you had indicated before that, and
11 it's your belief, that you don't have any of the
12 documents specifically described in the subpoena
13 as it was read to you; correct?

14 A Yes.

15 Q Okay. Now, in paragraph 16 of the
16 Osvaldo Gonzalez affidavit or declaration, I'm
17 going to take you through it. Both you and Mr. --
18 and Ryan were laughing but I want to take you
19 through it, line by line.

20 I'm quoting now, and I will read it to
21 you. You don't have to have it in front of you.

22 A Okay. I was looking for it. But I
23 don't -- I know I put it somewhere. Okay.

24 Q All right. "In addition to hiding the
25 artworks by shipping them off the property,

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2 McKenzie also planned to conceal the artwork [sic]
3 through a sequence of transfers that would hide
4 their true ownership."

5 Did you ever hear Mr. McKenzie say
6 anything like that?

7 A No.

8 Q Did you ever suggest anything like that
9 to Mr. McKenzie?

10 A No.

11 Q All right. I'm quoting again.

12 "Specifically, McKenzie devised a plan
13 to sell the artworks he wanted to conceal to an
14 individual named Greg Allen."

15 Did Mr. McKenzie ever suggest that he
16 wanted to hide artwork by selling it to you?

17 A No.

18 Q Did you ever suggest that he do so?

19 A No.

20 Q "Allen would then transfer the artworks
21 to various trusts, which McKenzie intended to set
22 up in Panama or Nevada and which..."

23 Did you ever tell him to set up any such
24 trusts?

25 A No.

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2 Q Did you ever suggest to him that he set
3 up trusts to hide the artwork?

4 A No.

5 Q Did he ever suggest to you that he was
6 going to do that?

7 A No.

8 Q Did -- and that goes on to say, quote,
9 about the trusts, he would say, quote -- he did
10 say in his affidavit -- "...which would name
11 McKenzie's son as their sole beneficiary."

12 Did you ever hear him talk about secret
13 trusts --

14 A Never.

15 Q -- benefiting his son?

16 A Never.

17 Q Did you ever suggest that to him?

18 A Never.

19 Q By "him," I mean McKenzie.

20 A No.

21 Q How about to anybody, did you ever
22 suggest that?

23 A No.

24 Q All right. "McKenzie told me,"
25 referring to Gonzalez, "that this would allow him

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to benefit financially from the sale of these works, while concealing the artworks and sales proceeds from the Court and the other parties."

Did he ever tell you that?

A No.

Q Did you ever discuss that with him?

A No.

Q Did you ever suggest that to him?

A No.

Q Is that a workable way to make money off of art?

A Absolutely not. And I think Michael would know better than that because if you taint it, it's useless. It's -- it's -- it's zero.

Q All right. Why putting this artwork in trusts concealed in Panama or Nevada, why would that not be a good idea to enhance their value?

A Because it -- it -- well, I don't know and I'm not a lawyer. So I can only tell you -- it's just -- it kind of wreaks of doing something illicit. And when you -- look, even if it's just hearsay or conjecture on a piece of art, it becomes worthless.

Q All right.

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during 2021 or 2020, or whatever date -- year it was, where you suggested --

A Mostly it was about what art might be available and what I was interested in, which is mostly HOPE and sculpture and monumental scale.

Q "Monumental scale," means larger --

A Right.

Q -- sculptures?

A Larger than six feet.

Q So were you talking about 4,000 pieces of art?

A No.

Q Were you talking about 1,000 pieces of art?

A No.

Q Were you talking about 20 pieces of art?

A Possible, but no.

Q And --

A It could have --

Q -- maybe not that --

A -- been but I don't think I ever had 20 images I was interested in. But there are multiples of the same piece of art.

Q And so --

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A So if that were to come out, and it's -- and I'm assuming this is public record, some of this, it already, just by the suggestion of it alone, would make all of that art pretty much worthless. So I don't think Michael would conceive that. He's smarter than that I hope.

Q And --

A No pun intended.

Q -- he never -- he never made any such suggestion to you; correct?

A Never.

Q Now, you indicated that you had suggested to him, at some point that, You might want to buy a package of Indiana artwork; correct?

A Yeah. I referred to it as "monumental works of art," which is a package or maybe a bigger sculpture or something like that, you know, where there's higher dollar values.

Q Did you and Mr. McKenzie ever discuss how many pieces of art would be in that package?

A No. We never got that far.

Q So how far did you get?

Take me through the best recollection you have of your suggestion to him made any time

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A We never got that far. We do -- kept discussing how it could work and what a package would be, and we had never gotten any further than that.

And mostly because, historically, in the last year, the clients that were interested got wind of what was going on and they were in no -- they were lukewarm at that point. "Let me know what happens when the suits are settled."

Q All right. And to be clear, the discussions you and Mr. McKenzie had about packages were contemplating less than 20 pieces of art?

A Yeah.

Q Okay. So this package sale, if it ever went forward, would not in any way get rid of 4,000 pieces of art that he had; correct?

A No.

Q Wouldn't make a dent in it, would it?

A No. Nor would it be something that I would be capable of.

Q You mean "capable" financially?

A Financially and -- and I don't know where to put 4,000 pieces of art -- anybody's art,

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1 for that matter.

2 Q Okay.

3 A The beauty of art is that it's -- it's
4 scarce.

5 Q In his affidavit, at -- at the -- the --
6 I think the third to last sentence -- well, I'll
7 just read it, I won't characterize it.

8 I will read towards the bottom of
9 paragraph 16. Mr. Gonzalez says, "McKenzie said
10 this advice was 'bullshit' and that he intended to
11 carry out his plan."

12 I don't want to ask you any questions
13 about that so just disregard that. Let me start a
14 new question.

15 "He had extensive negotiations with
16 Allen about implementing this plan."

17 Did you and Mr. McKenzie have extensive
18 negotiations about any sale of any package, 20 or
19 less?

20 A You mean in dollar value?

21 Q No.

22 He says here that you had extensive
23 negotiations with Mr. McKenzie about this plan.

24 A No.

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1 that.

2 In the very early stages, I was trying
3 to get in on the ground floor of the whole HOPE
4 campaign, because I was really enthusiastic about
5 it and I had investors that wanted to come in.
6 But Michael didn't chose me as a -- as a resource
7 for that. He picked somebody else which, you
8 know, obviously became financially involved with
9 the project.

10 So to that effect, yeah, we had a
11 discussion about, you know, what if back in the
12 very early, early days but that's -- it didn't go
13 very far. Michael had already had a -- he didn't
14 know me very well, he already had his mind set on
15 somebody else who would come in and that was a lot
16 stronger visually in the industry and that --
17 that -- that's -- that's it.

18 Q So you had discussed a purchase of a
19 small package both while he was alive and after he
20 died?

21 A Yeah. In that sense, yes.

22 Q All right. Now, what is a "tirage"?

23 A Tirage is the body of work authorized by
24 the artist.

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1 Q Did --

2 A This --

3 Q Did you have -- did you have extensive
4 negotiations with Mr. McKenzie about even the
5 smaller package of less than 20?

6 A No.

7 Q How far did it get when you proposed
8 buying such a package, as now narrow than less
9 than 20?

10 A It didn't get very far because the
11 images that I was interested in and the things
12 that were really on the table, such as sculpture,
13 were beginning to be, you know, tainted and it
14 kind of just spiraled down because clients, and
15 myself as well, lost interest in wanting to be
16 involved. It's just too hard --

17 Q Had you --

18 A -- too hard.

19 Q Had you ever had discussions with
20 Mr. McKenzie about buying one of these smaller
21 packages back while Robert Indiana was alive?

22 A No.

23 Q Okay. Okay.

24 A Well, wait a second. Let me back up on

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1 Just as --

2 Q So the tirage --

3 A Just as an example, a hundred prints
4 signed, numbered one through a hundred, that's the
5 tirage and that's all that should be made. And if
6 the artist has other pieces, they have to be
7 inside the artist's will to produce that inside
8 the tirage. The tirage is basically the inventory
9 that the artist has --

10 Q Yeah.

11 A -- has authenticated and said, "This is
12 all that you can make. This is it."

13 Q And you don't know what discussions
14 Mr. Indiana had with Mr. McKenzie about the number
15 of particular pieces of art that they could --

16 A No. It's none of my business and it
17 never came up for me in any way shape or form.

18 (Whereupon, the court reporter
19 requests clarification.)

20 BY MR. MARKHAM:

21 Q All right. So I'm going to ask the
22 question again. Let me -- let me finish. I
23 appreciate you trying to cooperate to get this
24 over with.

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So you never had a discussion -- discussions with Mr. McKenzie about any agreement he had with Mr. Indiana about how numerous any particular tirage would be?

A No.

Q And you don't know, do you, whether Mr. Indiana ever authorized Mr. McKenzie to put a stamp on in Mr. Indiana's name or sign something in Mr. Indiana's name?

A I do not know.

Q You indicated in one of your questions [sic] on Direct Examination that you assumed that all the artwork was signed or authorized by Mr. Indiana; do you recall that testimony?

A I do.

Q Okay.

A Yes.

Q And so either Mr. Indiana, you assume, either signed it himself or authorized somebody else to sign it?

A Right.

Q Now, you said that you saw him signing Indiana artwork from time to time. Did you?

A Several -- several times.

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basically saying, you know, "I never really signed canvases, I stamped them."

This is what he told me because I was curious. And he gave me a brief history about how in the 60s this is what he would do. He created a stencil. That was his signature and that was how he -- at least to the best of my recollection -- that was how he interpreted his signature for -- for paintings.

I don't know for all paintings but in the discussion, that was what -- what he was saying. And he -- you know, he indicated that he was -- he was doing that again. I don't know when he actually took it up or didn't.

But like I said, for me it was just, you know, some history of Robert Indiana. And I was the one who brought it up.

Q All right. Did he ever tell you anything about how tedious it was to sign all the artwork?

A Tedious?

No, he liked signing.

Q Yeah.

A He was -- look, he was already in his,

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Q Do you recall what artwork he was signing?

A He was signing HOPE.

Q Okay. And do you know how he was signing it?

A How?

Q Yeah.

A You mean, the actual technical way he was signing it?

Q Yes.

A It was either crayon or pencil. I mean, I paid attention to those little details. It was new to me to seeing an artist sign multiples and, yeah, I paid attention to the instrument that he was using.

Q Did you ever see him use the stamp, to --

A No.

Q -- put the stamp on the back of sculptures?

A No. But I did have a discussion about it with him because he --

Q And what did you --

A To the best of my recollection, he was

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probably, late 70s, early 80s, when I met him.

Q When was that?

A 2000- and probably -13. Whenever the Farnsworth Museum show was, I don't remember the date but in there somewhere, 2012, 2013. It could even have been back a little further. I don't -- I'm not good at the dates.

Yeah. In there -- in that range.

Q Okay.

A 2011, even, maybe.

Q And you didn't have any discussions with him about that in the latter days, say in 2016 --

A No.

Q -- or '17, did you?

A No.

Q No?

You indicated to me that you would see a copyright on a LOVE -- a piece of LOVE artwork; correct?

A Yes.

Q How many of such copyrights did you see?

A Just the copyright insignia on a LOVE sculpture. Usually, it's the date and the copyright insignia and the artist's name, incised

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on the sculpture.

Q And --

A It's incised. It's not, you know, it's stamped -- I mean, incised.

Q Did you ever see one that said, Copyright, Morgan?

A Yeah.

Q How many did you see that had a Morgan copyright on the LOVE image?

A Honestly, I don't remember. They probably all did but I don't remember it that way. I just remember the -- I only -- I only remember it now in retrospect because the copyright seems now to be an issue.

They all were stamped with copyrights, at least the ones that I would look at, potentially.

Q And they were copyrights where the copyright owner was purported to be Morgan; correct?

A Yeah. Usually it's Morgan.

Q All right. And if not Morgan, who was it?

A I'm sorry. Again?

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about conversations between you and Mr. Markham regarding the subpoena; do you recall that?

A I do.

Q When is the first time you had a discussion with Mr. Markham about the subpoena?

A Probably a couple months ago, I think. I'm not -- like I said, I'm not good -- I -- and timing, since I don't have a piece of paper to refer to or my notes, I'd say, you know, eight weeks ago.

Whenever -- I think John asked me if -- I'm trying to remember why it came up.

I was going to be subpoenaed by you guys. And I said, "Yeah, okay. Let's do it. Let's get it over with. Whatever has to be done, I'm here."

Q And Mr. Markham gave you instructions on how to collect documents responsive to the subpoena; is that right?

A He did. He mentioned it to me.

Q And what did he say to you?

A Basically, what he just had said and what he had just spoken about, to see if I had anything pertaining to the complaint.

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Q If not Morgan, who was it?

A If it wasn't Morgan, then it was probably unstamped, the name, and then they were suspect because -- and I'm doing this from memory so -- because I know there are LOVEs floating around that don't have anything on them.

Q Okay.

A And now they are all suspect. You know, now you are guilty until proven innocent if you have a LOVE sculpture.

Q Bear with me a second. I'm getting to the end.

MR. MARKHAM: I have nothing further.

THE WITNESS: Okay.

MR. RAKOWER: I have -- I have a few more questions, just within the scope of what Mr. Markham just discussed.

REDIRECT EXAMINATION

BY MR. RAKOWER:

Q Mr. Markham asked you some questions

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And I immediately said, "I don't. I don't have anything related to all of what this is about. I don't. I have nothing -- no part of it. I don't know about it. I didn't help construct or deconstruct any part of it."

So I have --

Q So do you --

A No, I don't have documents. The only documents that I have are related to sales, period.

Q Did he ask you whether you had read the complaint?

A Yesterday, and maybe before. I don't know.

And I probably looked at it before but I'm -- I'm -- I'm somebody who skims things and looks for where I'm involved. I didn't see any purpose in reading a 70-page document.

Q And you mentioned that the first time you read the document request was this morning; right?

A Yeah.

Q Okay. And --

A In a little more detail than I had

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before.

Q Did Mr. Markham instruct you to read the document request?

A Yes.

Q Did you read them when he instructed you to do so?

A No. I was traveling at the time and I'm -- you know, my sister has colon cancer and I was a little busy with things that I felt were more important.

It wasn't coming up for a little while, a couple months, and I'm --

Q Did you --

A I probably forgot about it.

Q Did you tell Mr. Markham that you had made purchase of artworks from Mr. McKenzie?

A Yes.

Q Okay. Did Mr. Markham ever ask you whether or not there were written records of those purchases?

A I don't recall.

Q Did Mr. Markham ever asked you whether you had e-mailed Mr. McKenzie regarding those purchases?

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A No.

Q Did Mr. Markham ever ask you whether you had texted Mr. McKenzie regarding those purchases?

A No.

Q Okay. Did Mr. Markham discuss with you the prospect of searching your e-mails for relevant documents?

A Yes.

Q What instructions did he give you?

A To see if I had anything pertaining to the complaint.

Q Did he give you search terms to run in your e-mails?

A I don't remember the detail. I know that he went over it with me and asked me that, you know, in earnest, make sure and look for anything that might be of substance to this complaint.

Q And did you do that, in earnest?

A I think so.

Q But you didn't read the complaint?

A I read it when I first got it. I read the first page --

Q Okay.

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A -- the second page, maybe. And I read the area where my name was.

I don't have any information regarding any of it so why should I be bothered with, you know, stuffing bandwidth into my mind that has absolutely no -- it has nothing to do with me.

Q And Mr. Markham just asked you some questions about a conversation you had with Mr. Indiana regarding a stamp or stencil?

A Yeah. Yes.

Q Do you recall that I asked you during your testimony if you had had any conversations with Mr. Indiana regarding a stamp or stencil?

A And I think I reacted that he did speak about his -- the history of him signing things and he mentioned the fact that he had a seal at some -- I mean, I don't remember the details. I only remember that it came up.

Q Okay. When did it come up?

A It came up in the first or second meeting that I was there because he was talking about the history of himself. You know, I mean, artists like to, you know, they like to pontificate about how wonderful they are.

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Q Okay. And when -- when was that?

A I'd have to say 2011, -12, -13, like that.

Q Okay. Where?

A Vinalhaven.

Q Okay.

A Or Rockland.

Q Mr. Indiana brought up the subject?

A Yes.

Q And --

A He brought up the subject that he didn't always sign his name, he -- sometimes he used a stencil. Of course, I didn't know that until he brought it up.

Q He mentioned that he used a stencil. Did he ever discuss anybody else using a stencil bearing his name?

A No.

Q Okay. Did he mention anything about a stamp?

A A stamp? No.

Q Okay.

A I'm assuming "stamp" and "stencil" are the same thing, aren't they?

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I mean, to me.

MR. RAKOWER: Okay. I have no further questions.

MR. MARKHAM: Just a couple more.

RE CROSS-EXAMINATION

BY MR. MARKHAM:

Q In several times, in answer to your most recent questions, you indicated that you and I went over the complaint.

Do you recall that I read to you from the subpoena the various document requests --

A Yes.

Q -- which are not in the complaint, they are in a different document; correct?

A Yes.

Q And I asked you to look for those and see if you had any; correct?

A Yes.

Q And you said you would and, in subsequent discussions, you told me that you didn't; correct?

A Correct.

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(Thereupon, the deposition was concluded at 2:38 p.m.)

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Q And you believe that --

A Yes.

Q And you believe that to be true based on your reading and my reading to you of those categories?

A Yes.

Q In the subpoena?

A Yes.

MR. MARKHAM: I've got nothing further.

MR. RAKOWER: I'm -- I'm done asking questions.

Thank you, Mr. Allen.

THE WITNESS: Thank you, Ryan.

MR. MARKHAM: So am I, Mr. Allen.

THE WITNESS: Thank you, John.

Thank you everybody. Appreciate it.

THE VIDEOGRAPHER: If that's everything, would you like me to go off the record?

MR. MARKHAM: Yes.

THE VIDEOGRAPHER: The time is 2:38 p.m. Going off the record. This concludes today's deposition.

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C E R T I F I C A T E

I, Clifford Edwards, Certified Shorthand Reporter, do hereby certify that prior to the commencement of the examination, the witness was duly remotely sworn to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a verbatim transcript of the testimony, that said deposition was taken by me stenographically at the time and date hereinbefore set forth, and the foregoing is a true and accurate transcript of the testimony.

I FURTHER CERTIFY that I am neither of counsel nor attorney to any of the parties to said suit, nor am I an employee of any party to said suit, nor of any counsel in said suit, nor am I interested in the outcome of said cause.

Witness my hand and seal as Notary Public this 5th day of November, 2021.

Clifford Edwards

Notary Public

My commission expires: 9/30/2026

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J U R A T

I have read the foregoing 137 pages
and hereby acknowledge the same to be a
true and correct record of the testimony.

GREGORY ALLEN

Subscribed and sworn to

Before me this ____ day of _____,
2021.

Notary Public

My Commission Expires:

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DEPOSITION ERRATA SHEET

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